



## FEDEX AUTOMATION AGREEMENT

This AGREEMENT ("Agreement") is entered into on \_\_\_\_\_, 2005, between FedEx Corporate Services ("FedEx"), and the undersigned customer ("Customer"), and sets forth the terms and conditions of Customer's use of the FedEx automated shipping equipment and associated software ("Equipment") provided to Customer by FedEx from time to time. Customer acknowledges and agrees that this Agreement governs Customer's use of all Equipment provided by FedEx to Customer from time to time as shown by FedEx's records, including the description and amount of Equipment provided, and the dates, locations, and account numbers under which, such Equipment is provided from time to time. In consideration of the promises and obligations below, FedEx and Customer agree as follows:

**SECTION 1. GRANT.** Subject to the terms and conditions of this Agreement, FedEx grants to Customer a personal, royalty-free, nonassignable license, without the right to grant sublicenses, to use the Equipment solely for Customer's use in labeling, recording, rating, tracking, preparing and invoicing its shipments tendered for delivery to FedEx or to third party carriers (if the Equipment provides this capability) and for no other purpose. When used in this Agreement, the word "Equipment" shall collectively refer to all items of equipment, software and materials provided to Customer by FedEx from time to time. Unless otherwise specified, when used in this Agreement, the name "FedEx" shall include FedEx Corporate Services, its parent company and any and all of its affiliate companies, including FedEx Express and FedEx Ground.

**SECTION 2. INSTALLATION.** (a) Customer will follow all terms and instructions provided by FedEx at any time for the installation of the Equipment, including in any user manuals and in any help texts on the Equipment, which instructions are incorporated into this Agreement by reference. (b) Customer will provide, at no cost to FedEx, the space, electrical power and telephone connections necessary for the operation of the Equipment. (c) FedEx shall have full, safe and free access to the Equipment during Customer's normal business hours for the purposes of installation, adjustment, inspection, relocation, or removal. (d) Customer grants permission for FedEx or its designee to copy and use, if necessary, Customer's user configurations and system settings for the sole purpose of configuring the Equipment.

**SECTION 3. USE.** (a) Customer will follow all of FedEx's terms and instructions provided from time to time for the use of the Equipment, including in any user manuals and on any help texts on the Equipment, which instructions are incorporated into this Agreement by reference. (b) Pursuant to the terms and conditions of this Agreement, Customer may generate output including FedEx Barcode Labels ("Labels") for Customer's sole use, subject to FedEx's prior written approval of the format. Customer agrees to immediately discontinue producing such Labels at any time upon request by FedEx. (c) Customer will comply with any FedEx EPDI specifications and Customer may be subject to two random audits per year, depending on the type of Equipment being used to ensure that Customer's EPDI data is accurate and within FedEx EPDI guidelines. (d) Customer acknowledges that it is responsible for the purchase of supplies necessary to use certain Equipment provided by FedEx and will contact Customer's FedEx Account Executive to determine what, if any, supplies it must purchase for use of any Equipment. (e) Customer acknowledges that use of certain Equipment will require Customer to modify its internal computer systems from time to time, and Customer agrees to make such modifications at its expense pursuant to the instructions provided by FedEx from time to time, which instructions are incorporated into this Agreement by reference.

**SECTION 4. CONFIDENTIALITY.** Intentionally Omitted

**SECTION 5. INSTRUCTIONS.** Customer will follow all of FedEx's terms and instructions as provided from time to time by FedEx for services rendered by FedEx, including instructions in any user manuals, applicable Service Guides and on any help texts on the Equipment, which instructions are incorporated into this Agreement by reference.

**SECTION 6. INVOICE ADJUSTMENTS AND REFUNDS.** (a) Customer will comply with FedEx's terms and instructions as provided from time to time regarding invoice adjustments and refunds for services rendered by

FedEx, including in any user manuals, applicable Service Guides and on any help texts on the Equipment, which terms and instructions are incorporated into this Agreement by reference. FedEx may suspend or modify any money-back guarantees in the event of Equipment failure.

**SECTION 7. MAINTENANCE, MODIFICATIONS AND ENHANCEMENTS.** (a) FedEx in its sole discretion may repair, modify, replace or remove the Equipment in the event of Equipment failure. (b) FedEx may provide Customer with periodic Equipment changes, modifications, updates, or enhancements on diskette or otherwise, and Customer will implement such changes, modifications, updates or enhancements, in accordance with instructions and specifications provided by FedEx (c) If requested by Customer, FedEx may, in its sole discretion, provide limited installation and integration assistance or technical support with respect to Customer's installation and use of the Equipment. All such items in Section 7(a)-(c) being collectively referred to herein sometimes as "Limited Support Services".

**SECTION 8. OWNERSHIP.** The Equipment is and shall at all times remain the property of FedEx. Customer shall have no right, title or interest in the Equipment, and shall not allow any lien or encumbrance to exist on it. Customer will not deface, damage, move, export, transship, alter, reproduce, copy, decompile, reverse engineer, sell, lease, lend, disclose, transmit, or transfer the Equipment or any software therein. Customer shall bear all risk of loss or damage to the Equipment while in Customer's care, custody or control, except loss or damage caused by FedEx's negligent or intentional acts.

**SECTION 9. TERM AND TERMINATION.** (a) Unless terminated as otherwise provided, this Agreement will continue until terminated by either party upon written notice. Upon termination of this Agreement, Customer shall cease using the Equipment and return it to FedEx in the same condition as when delivered to Customer, normal wear and tear excepted. (b) In addition FedEx may, at its sole option, terminate this Agreement upon 30 days written notice to Customer, and remove the Equipment: (i) if Customer fails to ship a minimum number of shipments or packages per day as mutually agreed between the parties from time to time; (ii) if Customer breaches any provision of this Agreement. The provisions of Sections 4, 5, 6, 8, 10, 11, 12, 13, 14 and 15 of this Agreement shall survive the termination of this Agreement.

**SECTION 10. TERMS AND CONDITIONS OF CARRIAGE. Intentionally Omitted**

**SECTION 11. DISCLAIMER OF WARRANTY.** Customer expressly acknowledges and agrees that the Equipment and any Limited Support Services, if any, are provided for Customer's use free of charge and that Customer's use of the Equipment and such Limited Support Services is at Customer's sole risk. FedEx warrants that the Equipment will be free from defect on the day Customer receives it which constitutes FedEx's sole and exclusive warranty. FedEx makes no representation or warranty regarding Limited Support Service, if any, provided hereunder. FEDEX EXPRESSLY DISCLAIMS AND EXCLUDES ALL OTHER WARRANTIES, EXPRESS AND IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. FEDEX DOES NOT WARRANT THAT THE EQUIPMENT OR THE LIMITED SUPPORT SERVICES, IF ANY, WILL MEET ALL OF CUSTOMER'S REQUIREMENTS OR THAT ITS OPERATIONS WILL BE UNINTERRUPTED OR ERROR FREE, OR THAT ANY DEFECT WILL BE CORRECTED. FURTHERMORE, FEDEX DOES NOT WARRANT NOR MAKE ANY REPRESENTATION REGARDING THE RESULTS OF CUSTOMER'S USE OF THE EQUIPMENT OR THE LIMITED SUPPORT SERVICES, IF ANY, IN TERMS OF CAPABILITY, CORRECTNESS, ACCURACY, RELIABILITY OR OTHERWISE. NO ORAL OR WRITTEN INFORMATION, REPRESENTATION OR ADVICE GIVEN BY FEDEX OR AN AUTHORIZED REPRESENTATIVE OF FEDEX SHALL CHANGE THIS WARRANTY OR CREATE AN ADDITIONAL WARRANTY.

**SECTION 12. REMEDIES.** In the event of a breach of the express warranty provided in Section 11 above, FedEx will replace the Equipment with replacement Equipment or, if not practical, supply Customer with another of FedEx's proprietary automated shipping products, if available; provided that Customer returns the defective Equipment to FedEx within thirty (30) days of the date Customer receives it. Customer acknowledges that this Section sets forth Customer's SOLE AND EXCLUSIVE remedy and FedEx's SOLE AND EXCLUSIVE liability for breach of warranty or any other duty.

**SECTION 13. LIMITATION OF LIABILITY.** CUSTOMER ACKNOWLEDGES THAT FEDEX IS PROVIDING THE EQUIPMENT AND ANY LIMITED SUPPORT SERVICES FREE OF CHARGE. UNDER NO CIRCUMSTANCES,

INCLUDING BUT NOT LIMITED TO NEGLIGENCE, SHALL FEDEX OR ANY OF ITS SUPPLIERS BE LIABLE FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR OTHER DAMAGES IN TORT, CONTRACT, PRODUCT LIABILITY OR UNDER ANY OTHER THEORY OF LAW RESULTING FROM THE INSTALLATION OR REMOVAL OF THE EQUIPMENT, OR THE PROVISION OF ANY LIMITED SUPPORT SERVICES, OR CUSTOMER'S USE, OR INABILITY TO USE, THE EQUIPMENT, INCLUDING, WITHOUT LIMITATION, DAMAGES RESULTING FROM LOSS OF USE, PROFITS, DATA, OR BUSINESS, AND DAMAGE TO CUSTOMER'S INTERNAL COMPUTER SYSTEMS, EVEN IF FEDEX, OR AN AUTHORIZED REPRESENTATIVE OF FEDEX, HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THIS EXCLUSION OF DAMAGES IS EFFECTIVE EVEN IF THE EXCLUSIVE REMEDY STATED IN SECTION 12 ABOVE FAILS OF ITS ESSENTIAL PURPOSE.

**SECTION 14. Intentionally Omitted.**

**SECTION 15. CONTROLLING LAW AND SEVERABILITY.** (a) With respect to the Equipment, this Agreement shall be governed by and construed in accordance with the laws of the United States and the domestic laws of the State of California, without reference to its conflicts of law provisions. If for any reason a court of competent jurisdiction finds any provisions of this Agreement, or a portion thereof, to be unenforceable, that provision shall be enforced to the maximum extent permissible so as to affect the intent of the parties and the remainder of this Agreement shall remain in full force and effect. Any cause of action with respect to the Equipment must be instituted in a court of competent jurisdiction in the State of California within one year after the claim or cause of action has arisen or such claim will be barred. (b) Pursuant to 48 C.F.R. 12.212 or 48 C.F.R. 227.7202, as applicable, the Equipment and any related materials and documentation are Commercial Items as defined in 48 C.F.R. 2.101 and are licensed to U. S. Government end users only as Commercial Items and only with the rights granted to all other end users as provided in this Agreement.

**SECTION 16. COMPLETE AGREEMENT.** This Agreement constitutes the entire agreement between Customer and FedEx with respect to the Equipment and supersedes any prior or contemporaneous understandings, representations, statements or agreements, written or oral, regarding the Equipment. No amendment to or modification of this Agreement will be binding on FedEx without FedEx's written consent. FedEx may modify this Agreement at any time for any reason upon notice.

**SECTION 17. VALIDITY OF AGREEMENT.** This Agreement has been pre-signed by FedEx and shall only be binding upon FedEx when executed by Customer if Customer has made no additions, deletions or changes to the Agreement. No additions, deletions or changes by Customer will be effective upon FedEx unless Customer receives in writing FedEx's consent to such additions, deletions or changes. An executed facsimile copy of this Agreement will be binding on Customer and will be admissible evidence of Customer's agreement to the terms and conditions in lieu of an original signature copy.

**FEDEX CORPORATE SERVICES, INC.**                      **CUSTOMER: State of California Department of General Services**  
**AUTHORIZED REPRESENTATIVE**

\_\_\_\_\_  
BARTON DAHMER                      **BY: AUTHORIZED SIGNATURE:** \_\_\_\_\_

**ACCOUNT EXECUTIVE**                      **TITLE:** \_\_\_\_\_  
**EMPLOYEE #: 395975**

**ACCOUNT NUMBER: 7054**

**AGREEMENT ID: n/a**                      **GROUND SHIPPER NUMBER: 48228/20967**

**PROCESS ID: n/a**                      **APPROVED LEGAL: LKM / 1.21.05 / 544951**

**Please fax this agreement to 888-879-6983**